*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.14891 OF 2005

% 12-10-2006

Mashetty Venkatesham, S/o.Venkanna
And others

… Petitioners

AND

$ The Joint Collector, Medak at Sangareddy
And others

… Respondents

! Counsel for Petitioners: Mr. C.Pratapa Reddy

^ Counsel for Respondents 1 & 2: A.G.P.For Revenue (General-T)
Counsel for Respondents 3 to 6: Mr.M.Rajamalla Reddy

<GIST

>HEAD NOTE:

? CASES REFERRED:

1. 2001(3) ALD 469

2. 1962 AC 294
3. 1995 Supp (2) SCC 428

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14891 of 2005

12.10.2006

Between:

Mashetty Venkatesham, S/o.Late Venkanna
And otehrs

…Petitioners

and

The Joint Collector, Medak at Sangareddy
and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14891 of 2005

ORDER:

The writ petition is filed challenging the order of the first respondent dated 23.10.2004 as modified by order dated 29.3.2005. By impugned order dated 23.10.2004, the first respondent set aside the order of the second respondent dated 08.12.1999 in Case No.E/5793/98 and directed to delete the names of respondents 3 to 6 from the occupant's column in respect of the lands in survey Nos.139, 180/A, 241, 242, 243, 246, 247 and 260 of Yeddumailaram village from record of rights and further directed to record the name of Mashetty Venkatesham. During the pendency of the writ petition, Venkatesham died and, therefore, petitioners 2 and 3 came on record as legal heirs of deceased first petitioner. It is the case of the petitioners that the land in survey Nos.139, 180, 241 to 243, 246, 247, 257, 259, 260, 289 and 290 situated at Yeddumailaram village of Sangareddy Mandal in Medak District was purchased by Mashetty Venkatesham.

Respondents 3 to 6 are children of brother of Venkatesham. They obtained mutation in the revenue records from the second respondent claiming the property to be joint family property of all brothers. Therefore, Venkatesham filed an application before the Revenue Divisional Officer, Sangareddy (RDO). The application was referred to the second respondent. Respondents 3 to 6 also filed an application before the RDO alleging that they purchased the property from joint family funds. The said application was also referred to the second respondent, who passed orders on 08.12.1999 directing to enter the name of Venkatesham by deleting the names of respondents 3 to 6. Aggrieved by the same, respondents 3 to 6 filed a revision petition before the first respondent under Section 9 of A.P. Rights in Land and Pattadar Pass Books Act, 1971 (RoR Act, for brevity). The first respondent allowed the revision petition taking into consideration the order passed by the Land Reforms Tribunal/Additional Revenue Divisional Officer (Land Reforms), Sangareddy, on the declaration filed by Venkatesham in which he declared the subject land to be joint family property. The first respondent also noticed that as the property was held by the joint family, the family does not hold any excess land under A.P. Land Reforms Laws. Subsequent to passing of the orders of the first respondent allowing the revision petition, respondents 3 to 6 filed another application requesting the first respondent specifically mention the survey numbers in the operative portion of the final orders issued. Accordingly, the second order dated 29.3.2005 was issued.

This matter came up for hearing at the interlocutory stage when W.V.M.P.No.1762 of 2006 filed by respondents 3 to 6 came up for enquiry. At that stage, this matter was heard finally and is being disposed of by this order.

In the counter affidavit filed by respondents 3 to 6 along with W.V.M.P.No.1762 of 2006 for vacating the interim order, it is stated that Mashetty Venkanna and his four sons, namely, Venkatesham, Pandurangam, Chukkaiah and Viswanadham constitute Hindu joint family. They own agricultural lands admeasuring Acs.45.07 cents in survey Nos.7/A, 54, 55, 139, 180, 242, 246, 260 and 289, but after death of Mashetty Venkatesham, the joint family purchased land admeasuring Acs.41.00 in survey Nos.139, 180, 241, 242, 243, 246, 247, 257, 259, 260, 289 and 290, in the name of the deceased first petitioner. The petitioner and three brothers filed individual declarations under the provisions of the A.P. Urban Land (Ceiling on

Agricultural Holdings) Act, 1973 (ULC Act, for brevity) stating that each of them got 1/4th share in the lands. These declarations being C.C.Nos.2495, 2496, 2497 and 2498 of 1975 were duly considered by the LRT holding that all the four sons of late Venkanna had 1/4th share each and, therefore, the joint family does not own excess agricultural land. Therefore, Venkatesham cannot now claim that the properties are self acquired properties.

Learned Counsel for the petitioners submits that the first respondent misdirected in law by placing reliance on the certified copy of the declaration filed by late Venkatesham before the LRT. According to the learned Counsel, when the rights are acquired by succession under Section 4 of RoR Act, mutation has to be carried out as per such succession and reliance placed on the declarations filed before the LRT is misdirection in law. **Per contra**, learned Counsel for respondents 3 to 6 submits that when once the deceased-first petitioner declared that the land is joint family property and by doing so, obtained order of being non-surplus landholder in the proceedings under RoR Act, he cannot take different stand. He placed reliance on an unreported judgment of this Court in **Pratapani Salaiah v Pratapani Rattamma**[1] and a reported judgment in **Raj Kishan Pershad and another v Joint Collector, R.R. District**[2].

The only point that arises for consideration is whether the first respondent committed the illegality in placing reliance on the order of LRT filed by the deceased-first petitioner and others in setting aside the order of the MRO?

There is no dispute about the relationship of the parties. There is also no dispute that late Mashetty Venkatesham and his three brothers filed separate declarations before LRT and all of them are declared as entitled to 1/4th share each in joint family property situated at Yellandu village. When late Venkatesham claimed only 1/4th share and got himself declared as non-surplus agricultural landholder, no other proceedings before the Recording Authority under RoR Act, he cannot take a different stand. That would be contrary to public policy and also amounts to fraud on public authorities.

In **Pratapani Salaiah** (supra), the father of the plaintiff (petitioner in civil revision petition) by name, Janardhan, filed a declaration before the LRT claiming that he had adopted the plaintiff and, therefore, he is

entitled to 2 Standard Holdings (SHs). The same was accepted by the LRT. In the plaintiff's application for injunction, the second defendant who is natural son of Janardhan disputed adoption *inter alia* on the ground that plaintiff's adoption was only for the purpose of ULC Act. This Court rejected the plea observing as under.

> In my opinion, *prima facie* the parties cannot be permitted to plead one legal relationship before the land ceiling authorities and another relationship when the matter comes to the civil court. The fact that defendants 1 and 2 were not parties to the land ceiling proceedings does not make any difference inasmuch as they are claiming through late Janardhan as his legal heirs. Further, they had the benefit of the said plea taken before the land ceiling authorities. If indeed they can be permitted to blow hot and cold, it will become necessary for the court to consider whether the matter should not be brought to the notice of the District Collector or the concerned land ceiling authorities for resumption of the land in excess of one standard holding. **I am, therefore, in disagreement with both the courts on this question and I hold that as a matter of public policy, the parties cannot be permitted to raise pleas which are contrary to the cases set up by them or their predecessors in title before the land ceiling authorities**. On that basis, the defendants cannot be permitted to reopen the question of the plaintiff's adoption at this juncture. I, therefore, hold that the plaintiff has made out a *prima facie* case with regard to his title as an adoptive son of late Janardhan.

In **Palaniappa Chettiar v Arunasalam Chettiar**[3], Lord Denning speaking for Judicial Committee held as under.

> That he made the transfer for a fraudulent purpose, namely, to deceive the public administration into thinking that he only held 99 acres of land and his son 40 acres, whereas in truth he himself meant to hold the whole 139 acres. Once this disclosure was made by the father, the Courts were bound to take notice of it, even though the son had not pleaded it……But where the fraudulent purpose has actually been effected by means of the colourable transfer, there is no room for repentance. The father has used the transfer to achieve his deceitful end and cannot go back on it. He cannot use the process of the Courts to get the best of both worlds – to achieve his fraudulent purpose and also to get his property back. The Courts will say: 'Let the estate lie where it falls'… … …

In **Raj Kishan Pershad** (supra), after referring to **Palaniappa Chettiar** (supra), this Court held as under.

> It is, however, necessary to refer to *Digambar Adhar Patil v Devram Girdhar Patil* [4], in which the effect of proceedings under the Land Reforms Legislation and the proceedings under the Tenancy Act was considered by the Supreme Court. In that case the appellant was a tenant claiming rights under Bombay Tenancy and Agricultural Lands Act, 1948. His application under Section 32-G of the said Act before the Tenancy Tribunal praying to determine the price to be paid to the land owners for the purchase of Ac.8-26 guntas was rejected on the ground that the tenant was already holding land in excess of ceiling limit. The order of the Tenancy Tribunal was reversed by the Bombay High Court. Before the Supreme Court, there was a claim on behalf of the minor son of the tenant to an extent of Ac.7-34 guntas and the claim of the tenant's brother in whose favour there was an alleged partition under which the brother was given the same land. Reliance was placed on the statement made by the land owner before the Tenancy Tribunal as well as the documentary evidence in support of partition. The Supreme Court accepted the oral evidence of the land owner before the Tenancy Tribunal as conclusive and held that if the land which fell to the share of the brother of the tenant is excluded, the latter would be within the ceiling area entitled to purchase the land form the land owners as claimed. Accordingly, the judgment of the High Court was confirmed. The facts before the Supreme Court in that case disclose that the statement made by the land owner before the Tenancy Tribunal should be given due weight while determining the rival rights of the owner and the tenant… …
>
> … … Applying the principle in *Digambar Adhar* case (supra) it be almost held that the Land Reforms Tribunal while determining the holding of late *Hari Kishan Prasad* relied on the factum of an extent of Acs.150-96 being in possession of the protected tenants and to that extent gave benefit to the declarant. A declarant who makes a statement and gets benefit out of such statement in getting excluded that land from his holding would not be permitted to turn around at a later stage; in this case at the stage of issue of ownership certificate to the protected tenant to resile from the statement made before the Land Reforms Tribunal. The same would amount to fraud on public administration.

As noticed, the deceased-first petitioner claimed the property to

be joint family property and did not demour when 1/4th share was computed to his share in land ceiling proceedings. His legal heirs cannot now be permitted to take a different stand before the authorities under RoR Act. The first respondent, therefore, came to the correct conclusions and there is no infirmity or misdirection in placing reliance on the certified copy of the order passed by the LRT.

The writ petition, for the above reasons, is accordingly dismissed. No costs.

October 12, 2006 (**V.V.S.RAO, J**)

NOTE:
L.R. Copy be marked.
(By order)
YS

---

[1] C.R.P.No.1615 of 1987, dated 01.9.1987.

[2] 2001(3) ALD 469

[3] 1962 AC 294

[4] 1995 Supp (2) SCC 428